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17  
18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 (SAN JOSE DIVISION)  
21

22 SENTIUS INTERNATIONAL, LLC,  
23 Plaintiff,  
24 v.  
25 MICROSOFT CORPORATION,  
26 Defendant.  
27  
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Case No. 5:13-cv-00825 PSG

**JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED]  
ORDER, AND RULE 26(f) REPORT**

DATE: May 28, 2013  
TIME: 2:00 p.m.  
PLACE: Courtroom 5  
JUDGE: Hon. Paul S. Grewal

Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9(a), Patent Local Rule 2.1(a), ADR Local Rule 3-5, and this Court's February 28, 2013 Clerk's Notice of Setting Case Management Conference (D.I. 3), a conference was held on May 3, 2013 between Vineet Bhatia from Susman Godfrey L.L.P., counsel for Plaintiff Sentius International, LLC ("Sentius") and Jonathan Lamberson and Jerry Yen from Fish & Richardson P.C., counsel for Defendant Microsoft Corp. ("Microsoft"). The parties additionally conferred via electronic mail. The parties jointly submit this Case Management Statement under Civil Local Rule 16-9(a).

## **1. JURISDICTION AND SERVICE**

This court has subject matter jurisdiction over Sentius' claims and Microsoft's counterclaims under 28 U.S.C. §§ 1331 and 1338(a) because this case involves a dispute over patent infringement under 35 U.S.C. § 271 and patent invalidity under 35 U.S.C. § 101 *et seq.* Venue is proper in this court under 28 U.S.C. § 1391 and 1400(b). No party remains to be served.

## **2. FACTS**

Plaintiff Sentius is a limited liability company organized and existing under the laws of the State of Virginia, having a principal place of business at 8300 Greensboro Drive, Suite 800, McLean, Virginia 22102. Sentius filed this action in the Northern District of California on February 22, 2013. Sentius' Complaint alleges that Microsoft infringes U.S. Patent Nos. 7,672,985 ("the '985 Patent") and 8,214,349 ("the '349 Patent"), and U.S. Reissue Patent Nos. 40,731 ("the '731 Patent") and 43,633 ("the '633 Patent") (collectively, "the Asserted Patents"). Sentius seeks, *inter alia*, an injunction, damages, fees, and costs.

Defendant Microsoft is a Washington corporation, with its principal place of business located at One Microsoft Way, Redmond, WA 98052. Microsoft filed a timely Answer and Counterclaims to Sentius' Complaint on April 29, 2013. Microsoft denies Sentius' claims and seeks a declaration that it does not infringe any claims of the Asserted Patents and that the claims of the Asserted Patents are invalid. Microsoft seeks, *inter alia*, fees and costs.

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1 **3. PRINCIPAL FACTUAL AND LEGAL ISSUES IN DISPUTE**

2 The parties have identified the following principal disputed issues:

- 3 (a) The proper construction of disputed claim terms in the Asserted Patents;
- 4 (b) Whether Microsoft infringes any valid claims of the Asserted Patents;
- 5 (c) Whether any asserted claim of the Asserted Patents is invalid for any reason
- 6 including under 35 U.S.C. §§ 101, 102, 103 and/or 112;
- 7 (d) Whether Sentius is barred from obtaining any relief under the equitable doctrines
- 8 of laches, unclean hands, estoppel and/or waiver;
- 9 (e) Whether Sentius is barred from obtaining relief under the doctrine of prosecution
- 10 history estoppel; and
- 11 (f) Appropriate forms of relief due to either party, including declaratory, injunctive
- 12 and monetary relief.

13 **4. MOTIONS**

14 There are no pending motions at this time. The parties anticipate that summary judgment

15 motions will be filed that may address issues of patent infringement and/or non-infringement,

16 validity and/or invalidity, enforceability and/or unenforceability, and/or remedies.

17 **5. AMENDMENT OF PLEADINGS**

18 The parties may seek to add additional claims, counterclaims and affirmative defenses as

19 discovery proceeds. The parties propose February 14, 2014, as the deadline for amending

20 pleadings.

21 **6. EVIDENCE PRESERVATION**

22 The parties will take reasonable steps to preserve documents and evidence relating to the

23 issues presented in Sentius' Complaint and Defendants' Counterclaims. The parties will also take

24 reasonable steps to preserve documents and evidence relating to the issues presented in subsequent

25 amendments of those pleadings, based on their understanding of the issues at the time. Such

26 reasonable steps shall include issuing document preservation instructions to the key individuals

27 likely to have such documents, directing such individuals to take affirmative steps to preserve such

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documents, whether in hardcopy or electronic form, and to suspend applicable document destruction/deletion procedures.

## 7. DISCLOSURES

The parties agree to make their initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on or before June 4, 2013. Each party reserves its right to amend such disclosures as discovery progresses.

## 8. DISCOVERY

(i) **Discovery Taken to Date:** No discovery has been taken or served to date.

(ii) **Anticipated Scope of Discovery:** The parties anticipate discovery on the claims for patent infringement, affirmative defenses and counterclaims thereto, claim construction, and prayers for relief.

(iii) **Limits on Discovery:** The parties agree to the following limits on discovery:

(a) **Fact Depositions:** The parties agree to a total presumptive limit of six (6) depositions per side and a presumptive limit of seven (7) hours per individual deposition. Multiple days of deposition of a single witness will count as multiple depositions.

The parties further agree that expert depositions and non-party depositions will not count toward these limits.

For depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6), the parties agree to a limit of fourteen (14) hours of deposition testimony per party, irrespective of the number of topics or witnesses designated.

The parties reserve the right to revisit the issue of the number and length of depositions as discovery progresses. If any party seeks to exceed the above limits, the parties agree to meet and confer in good faith to attempt to resolve the issue without intervention by the Court. Each party reserves the right to seek leave of Court in order to take additional depositions.

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1           **(b) Expert Depositions:** The parties agree that each side may take up to seven (7)  
2           hours of deposition testimony of each expert identified by an adverse party for  
3           each report provided. Notwithstanding the foregoing, if any party identifies a  
4           single expert to provide a report related to both infringement and validity, the  
5           seven (7) hour limit shall be expanded to fourteen (14) hours.

6           **(c) Interrogatories:** The parties agree to the presumptive limits set forth in the  
7           Federal Rules of Civil Procedure regarding interrogatories.

8           **(d) Requests for Admission:** The parties agree that each side may serve a  
9           maximum of fifty (50) requests for admission.

10          **(iv) Discovery Plan:** The parties intend to pursue discovery by taking depositions and  
11          by serving document requests, interrogatories, and requests for admission, subject  
12          to the limits in the previous section.

13          **(a) Protective Order:** The parties agree that a protective order will be necessary, in  
14          light of the sensitive and proprietary information that will be exchanged during  
15          discovery. The parties intend to meet and confer on and submit a proposed  
16          Stipulated Protective Order to the Court.

17          **(b) Privilege Logs:** The parties agree that privileged communications and  
18          documents covered by work product protection and dated after the filing of this  
19          lawsuit need not be included in any privilege log. The parties further agree that  
20          to the extent any Party relies on a joint defense privilege, the communication will  
21          be logged.

22          **(c) Expert Reports:** The parties agree that document discovery concerning  
23          testifying experts shall be limited to the final versions of the testifying experts'  
24          reports and any materials relied upon by the testifying expert in forming his or  
25          her opinion(s) in this case. Testifying experts' draft reports, notes, and  
26          conversations or communications with counsel will not be subject to discovery  
27          and do not need to be logged in a privilege log unless such materials is relied  
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upon by a testifying expert in forming his or her final report, trial or deposition testimony, or any opinion in this case. If an expert indicates in deposition that he or she relied upon a document or source not otherwise specified in the final report, that document or source also is discoverable.

**(d) Method of Service:** The parties agree that service by electronic mail by 11:59 PM Pacific Time on a given day will be treated as service by mail.

**(e) Electronic Discovery:** The parties agree to cooperate to develop protocols to lessen the burden of producing electronic discovery. The parties are continuing to meet and confer to reach an agreed upon plan for electronic discovery and will submit an agreed electronic discovery plan or a joint submission highlighting any remaining disputed issues.

## **9. CLASS ACTIONS**

This is not a class action.

## **10. RELATED CASES**

The parties are unaware of any pending cases related to the present action.

## **11. RELIEF**

Sentius seeks judgment that Microsoft has infringed and continues to infringe the Asserted Patents. Sentius seeks a permanent injunction, damages under 35 U.S.C. § 284, attorney fees under 35 U.S.C. § 285, and such relief at law and in equity as the Court may deem just and proper.

Microsoft seeks a declaration that it has not and is not infringing any valid claim of the Asserted Patents, whether directly or indirectly. Microsoft further seeks a declaration that the Asserted Patents are invalid. Microsoft seeks a dismissal of Sentius' claims in their entirety and with prejudice and a declaration that Sentius take nothing away from its complaint. Microsoft also seeks any appropriate costs and attorneys' fees pursuant to 35 U.S.C. § 285 and such further relief as the Court may deem appropriate under the circumstances.

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**12. SETTLEMENT AND ADR**

The parties are willing to engage in early and meaningful settlement discussions. The parties have met and conferred regarding ADR pursuant to Civil L.R. 16-18 and ADR L.R. 3-5, have reviewed the ADR procedures in ADR L.R. 3-5, and have stipulated to agree to early neutral evaluation. The parties do not believe any motions are necessary to facilitate settlement.

**13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

The parties consent to have this case proceed before Magistrate Judge Grewal.

**14. OTHER REFERENCES**

The parties do not believe that this case is suitable for reference to binding arbitration or to a Special Master. This case is also not appropriate for reference to the Judicial Panel on Multidistrict Litigation.

**15. NARROWING OF ISSUES**

The parties are not aware of issues that can be narrowed by agreement or by motion at this time and do not have suggestions to expedite the presentation of evidence at this time. The parties anticipate that as discovery proceeds, the issues will be narrowed for trial.

**16. EXPEDITED SCHEDULE**

Because of the nature and complexity of the claims and defenses in this action, the parties submit that this is not the type of case that can be handled on an expedited basis or with short-circuited procedures.

**17. SCHEDULING**

The parties propose following dates for scheduling in this case consistent with the Patent Local Rules, with certain minor modifications:

<b>Proposed Date</b>	<b>Event/Authority</b>
May 28, 2013	Initial Case Management Conference [Civil L.R. 16-10; February 28, 2013 Order (D.I. 3)]
June 4, 2013	Last day for parties to make initial disclosures [Fed. R. Civ. P. 26(a)(1)]

June 11, 2013	Plaintiff's Initial Disclosure of Asserted Claims & Preliminary Infringement Contentions & accompanying document production [Patent L.R. 3-1 & 3-2]
July 26, 2013	Defendants' Preliminary Invalidity Contentions & accompanying document production [Patent L.R. 3-3 & 3-4]
Aug. 9, 2013	Parties to exchange Proposed Terms & Claim Elements for Construction [Patent L.R. 4-1(a)]
Aug. 30, 2013	Parties to exchange Preliminary Claim Constructions [Patent L.R. 4-2(a)]
Sept. 24, 2013	Parties to file Joint Claim Construction & Prehearing Statement; parties to exchange expert declarations or other disclosures on claim construction for any experts who will submit declarations or testify regarding claim construction at the Claim Construction Hearing. [Patent L.R. 4-3]
Oct. 24, 2013	Claim Construction Discovery Cut-Off [Patent L.R. 4-4]
Nov. 8, 2013	Plaintiff to file Opening Brief on Claim Construction [Patent L.R. 4-5(a)]
Nov. 22, 2013	Defendant to file Responsive Brief on Claim Construction [Patent L.R. 4-5(b)] (14 days)
Dec. 6, 2013	Plaintiff to file Reply Brief on Claim Construction [Patent L.R. 4-5 (c)] (7 days)* *Extended in light of Thanksgiving holiday
Dec. 20, 2013 or as soon thereafter as the Court's calendar permits	Court conducts Claim Construction tutorial and ( <i>Markman</i> ) Hearing
30 days after Markman Ruling	Last day to Serve Final Infringement Contentions and Motion for Leave to Amend [Patent L.R. 3-6]
50 days after Markman Ruling	Last day to disclose advice of counsel [Pat. L.R. 3-8]
60 days after Markman Ruling	Last day to Serve Final Invalidity Contentions and Motion for Leave to Amend [Patent L.R. 3-6]



1	Feb. 14, 2014	Last day to amend pleadings
2	Mar. 7, 2014	Parties to exchange privilege logs
3	Apr. 25, 2014	Fact discovery cut-off
4	May 16, 2014	Initial expert reports exchanged on matters on which a party bears the burden of proof
5	June 13, 2014	Responsive expert reports exchanged
6	July 11, 2014	Expert discovery completed
7	August 8, 2014	Deadline for filing dispositive motions
8	August 29, 2014	Last day for parties to file/serve oppositions to dispositive motions
9	Sept. 12, 2014	Last day for parties to file/serve reply briefs in support of dispositive motions
10	Sept. 26, 2014 or as soon thereafter as the Court's calendar permits	Dispositive motion hearing
11	Dec. 19, 2014	Last day for parties to conduct pretrial meet-and-confer
12	Dec. 19, 2014	Last day for parties to file Daubert motions
13	Jan. 16, 2015	Last day for parties to file Joint Pretrial Conference Statement, trial briefs, motions in limine, depo designations, trial witness list, exhibit list, exhibits, voir dire, jury instructions, proposed findings of fact/conclusions of law, and verdict forms
14	Jan. 16, 2015	Last day for parties to file oppositions to Daubert motions
15	Jan. 30, 2015	Last day for parties to file oppositions to motions in limine
16	Jan. 30, 2015	Last day for parties to file reply briefs in support of Daubert motions
17	Feb. 6, 2015 or as soon thereafter as the Court's calendar permits	Pretrial Conference
18	Feb. 16, 2015 or as soon thereafter as the Court's calendar permits	Trial

1 **18. TRIAL**

2 A jury demand has been made. The parties propose a trial date in February 2015 or as soon  
3 thereafter as the Court's calendar permits. The parties estimate that the expected length of trial is  
4 five days, with trial time to be split equally between the two sides.

5 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

6 The parties have filed their respective Certifications of Interested Entities or Persons with  
7 the Court. There are no other non-party interested entities or persons.

8 **20. OTHER MATTERS**

9 The parties also discussed the following topics as set forth in Patent Local Rule 2-1(a):

10 **A. Proposed Modifications of Obligations and Deadlines in Local Patent Rules:**

11 See schedule proposed in Section 17, above.

12 **B. Privilege log:**

13 The parties will exchange privilege logs, whose format will be agreed to in advance, no later  
14 than March 7, 2014.

15 **C. Scope and Timing of Claim Construction Discovery:**

16 The parties may use expert witness declarations in support of one or more of their claim  
17 construction positions. If so, each party will disclose whether it intends to use a claim construction  
18 expert witness, and will provide an expert report and/or declaration, in accordance with the  
19 deadlines provided in Local P.R. 4-2 and 4-3, and proposes that claim construction discovery  
20 (including any expert witness depositions) close in accordance with the deadline provided in  
21 Section 17, above.

22 **D. Format of Claim Construction Hearing and Technology Tutorial:**

23 The parties do not anticipate live testimony at the claim construction hearing. The parties  
24 anticipate that three (3) hours will be required for argument at the claim construction hearing, split  
25 evenly between the sides. Unless the Court prefers a different format, the parties will separately  
26 argue each disputed term. To the extent that the Court wishes to entertain a tutorial on the relevant  
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1 technology, the parties propose that this take place immediately prior to the Markman hearing, and  
2 that each side be allotted thirty (30) minutes for this presentation, with Plaintiff presenting first.

3  
4 Dated: May 17, 2013

Respectfully Submitted,

5  
6 By: /s/ Steven G. Sklaver  
7 (by Jonathan J. Lamberson with permission)  
8 Steven G. Sklaver

9 Attorneys for Plaintiff  
SENTIUS INTERNATIONAL, LLC

10 Dated: May 17, 2013

Respectfully Submitted,

11  
12 By: /s/ Jonathan J. Lamberson  
13 Jonathan J. Lamberson

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8 **CASE MANAGEMENT ORDER**

9 The above Joint Case Management Statement and [Proposed] Order is approved as the Case  
10 Management Order for this case and all parties shall comply with its provisions.

11 IT IS SO ORDERED.  
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13 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hon. Paul S. Grewal  
United States Magistrate Judge

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**DECLARATION OF CONSENT**

I, Jonathan J. Lamberson, hereby attest:

1. Concurrence in the filing of the following document has been obtained from each of the other signatories, which shall serve in lieu of their signatures on the document:

**JOINT CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER,  
AND RULE 26(F) REPORT**

2. I shall maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party until one year after final resolution of the action pursuant to Local Rule 5-1(i)(3) of the United States District Court for the Northern District of California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed in Redwood City, California on May 17, 2013.

By: /s/ Jonathan J. Lamberson  
Jonathan J. Lamberson

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 17, 2013 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ. L.R. 5-1(h)(1). Any other counsel of record will be served by U.S. mail or hand delivery.

By: /s/ Jonathan J. Lamberson  
Jonathan J. Lamberson

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